

REMARKS

In the final Office Action¹, the Examiner rejected claims 4 and 5 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, and rejected claims 4 and 5 under 35 U.S.C. § 102(b) as being anticipated by Sheppard, Jr. et al. (U.S. Patent 6,143,247, hereafter "Sheppard").

By this amendment, Applicants propose to amend claim 4. Claims 4 and 5 remain pending and under consideration.

Applicants respectfully traverse the Examiner's rejection of claims 4 and 5 under 35 U.S.C. § 112, first paragraph.

Applicants have amended claim 4.

In addition, the Specification of this application discloses,

It is to be noted that while the principal surface is divided into two regions of the recording region 3 and the reaction region 4 in the bioassay substrate 1, the recording region 3 and the reaction region 4 may overlap with each other on plane surface region. In this case, it is sufficient that position of the signal recording film 7 is formed at position remote or spaced, in a thickness direction from the reaction region 4, from depth of focus of laser beams to be irradiated in order to excite fluorescence (fluorescence of which detail will be described later), and laser beams for control (control light of which detail will be described later). Namely, this is because if the signal recording film 7 is positioned ahead of the focal point similarly to that of the two-layer (double layer) recording of the optical disc 2, laser beams are sufficiently reached to the reaction region 4.

Specification at page 16, line 13 to page 17, line 3, emphasis added. Accordingly, the Specification fully supports amended claim 4, which recites "at least a depth of focus of the laser beam," (emphasis added).

¹ The Office Action contains statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

For at least the above reasons, Applicants respectfully request withdrawal of the rejection of claims 4 and 5 under 35 U.S.C. § 112, first paragraph.

Applicants respectfully traverse the Examiner's rejected claims 4 and 5 under 35 U.S.C. § 102(b) as being anticipated by Sheppard.

Claim 4, as amended, recites a bioassaying apparatus for performing bioassay based on a reaction between probe material and sample material, the bioassaying apparatus comprising, among other things,

a substrate holder for holding and rotationally driving a substrate for bioassay, the substrate including a reaction region and an information region, the reaction region being formed on an upper layer of the substrate, and the information region being formed on a lower layer of the substrate, the reaction region being adapted so that the sample material and fluorescence marking agent are permitted to be dropped from an upper side of the substrate and the probe material is permitted to be immobilized on the upper layer, the reaction region serving as a field of mutual reaction between the probe material and the sample material, the reaction region receiving a laser beam with respect to the fluorescence marking agent from a lower side of the substrate, and the information region receiving light from the lower side of the substrate to record and/or reproduce information contained in the information region, wherein the lower layer is spaced from the upper layer in a thickness direction by at least a depth of focus of the laser beam.

(Emphasis added). Sheppard fails to teach at least the claimed reaction region receiving a laser beam from a lower side of the substrate, the claimed information region receiving light from a lower side of the substrate, and the claimed lower layer being spaced from the claimed upper layer in a thickness direction by at least a depth of focus of the laser beam.

Sheppard, at column 14, lines 40-45, discloses, "[t]he apparatus of FIG. 5A [or 5D] . . . comprises a light source 54, focusing lens system 53, assembly 51 [or 55]

comprising optical elements to collect, filter and focus light onto the photodetector 50,"
(emphasis added). Sheppard, at column 14, lines 50-58, further discloses,

FIG. 5D is an apparatus suitable for fluorescence detection on platforms shown in FIGS. 1A and 1C, where the assembly of optical elements 55 includes elements such as excitation and emission filters, a dichroic mirror and lenses. FIG. 5E is an apparatus suited for use with platforms shown in FIGS. 1D. The elements 56 comprise those necessary to read data from an optical disc such as a CD-ROM. electrochemical and radioactivity detecting means.

(Emphasis added). As evident from Figures 5D and 5E of Sheppard, reproduced below, Sheppard at best discloses a platform receiving fluorescence excitation light from a lower side of the platform and receiving data reading light from an upper side of the substrate. Accordingly, Sheppard fails to teach, "the reaction region receiving a laser beam with respect to the fluorescence marking agent from a lower side of the substrate, and the information region receiving light from the lower side of the substrate to record and/or reproduce information contained in the information region," as recited in claim 4 (emphasis added).

FIG. 5D

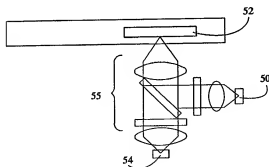
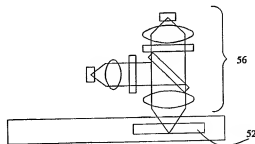


FIG. 5E



Further, Sheppard, at column 11, lines 53-60, discloses, "[t]he platform of FIG. 1D is advantageously provided as an optical disk wherein digital information has been encoded in an standard format; however, in the platforms of the invention, the thickness of the substrate [14] is thinned sufficiently so that the presence of particles on the surface will interfere with the reading of the encoded data using the optical detection system pictured in FIG. 5E," (emphasis added). Accordingly, Sheppard merely discloses that substrate 14 is sufficiently thin. Sheppard does not disclose the thickness of substrate 14 in any way relates to the depth of focus of light source 50 or any other light sources. Accordingly, Sheppard fails to teach, "the lower layer is spaced from the upper layer in a thickness direction by at least a depth of focus of the laser beam," as recited in claim 4 (emphasis added).

For at least the above reasons, claim 4 distinguishes over Sheppard. Claim 5 depends from claim 4 and distinguishes over Sheppard at least due to its dependence.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing this application in condition for allowance.

Alternatively, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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